RECORD
AND
BRIEFS

Supreme Court, U.S.
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No. 14-212

In the Supreme Court of the United States

JEREMY CARROLL,

Petitioner,

v.

ANDREW CARMAN and KAREN CARMAN,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

BARRY H. DYLLER
Counsel of Record
DYLLER LAW FIRM
88 North Franklin St.
Wilkes-Barre, PA 18701
(570) 829-4860
barry.dyller@dyllerlawfirm.com

Counsel for Respondents

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

COUNTER-QUESTIONS PRESENTED

1. Whether the Third Circuit correctly held that a police officer without a warrant who wished to engage in a "knock and talk" violated the Fourth Amendment when he bypassed the front path, front porch and front door, and instead walked through a backyard without any pathway, and climbed the steps onto a back deck attached to a house?

2. Whether the Third Circuit announced a "categorical" rule, or simply discussed and applied pre-existing law that police like all others may approach a house in the same manner as any other uninvited visitor?

3. Was the law applied by the Third Circuit clearly established at the time of the underlying events?

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INTRODUCTION

The entire premise of Petitioner Jeremy Carroll's claim that this Court should grant *certiorari* is false. Petitioner Carroll repeatedly but inaccurately states that the Third Circuit created a "categorical" or "rigid" rule that "knock and talk" encounters between the police and a citizen must always begin at the front door. The problem with Carroll's premise is that it is false. Under no reasonable reading of the Third Circuit's opinion is there any such categorical rule. In fact, the Third Circuit went out of its way several times to state that there may be other circumstances or other factual scenarios in which a knock and talk need not begin at the front door. Carroll's petition for *certiorari* relies on a common litigation tactic: if one states a position frequently and emphatically, then fiction becomes fact.

Carroll's other false premise, repeated early and often, is that the jury "found that the back door reasonably appeared to be the customary entry for visitors arriving at the [respondents Carmans'] house by car. . . ." Pet. Brief, at 1-2. Notably, Carroll does not refer to any part of the record for this premise, as he cannot. There simply was no such jury finding, as no such question was put to the jury.

The Third Circuit's opinion in this case was clear, correct and in agreement with the opinions of its sister circuits and with this Court's cases. The court held that on the objective, undisputed facts in this case, as revealed by both the testimony and the photographs which were part of the evidence and which the Court of Appeals appended to its opinion, the police officer who wished to conduct a knock and talk should have gone

up the clearly visible front path to the front door and knocked on the door. Instead, the officer walked across a backyard with no path, climbed stairs to a deck which was attached to the back of the house and which was not visible from the street. The opinion was well written, but it was unremarkable in that it simply applied pre-existing and clearly established law. It did so narrowly, so that future situations could be guided by its explanations, but constrained only by the facts of this particular case.

STATEMENT OF THE CASE

Underlying Facts of Record

Petitioner and His Family Were Engaged in Domestic Activities

On July 3, 2009, respondents Karen and Andrew Carman were sitting in their kitchen with Karen's sister, non-party Jacqueline Vergottini, making salads for their Fourth of July picnic the following day. (COA App. 27, 46; TT, 18:4-8, 37:6-15).[1]

Andrew Carman, Karen Carman and Ms. Vergottini were the only people present at the home. (COA App. 46; TT, 37:6-7).

Petitioner Carroll and Trooper Roberts

While on duty on July 3, 2009, Carroll, a Pennsylvania State Trooper, was dispatched to the Carman residence to look for a stolen vehicle with a New Jersey license plate and the operator of the

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[1] "COA App." refers to the Appendix in the Court of Appeals. "TT" refers to the Trial Transcript.

vehicle, Michael Zita, who had two loaded, stolen handguns in his possession. (COA App. 76-77, 90-91; TT, 67:18-68:13, 81:23-82:25).

When Carroll and non-party Trooper Roberts were dispatched to the Carmans' residence, they were told to look for a specific car bearing a New Jersey license plate number. (COA App. 72; TT, 63:7-10).

The troopers did not have a warrant to search the Carmans' property or to arrest Zita. (Pet. App. 3a).

None of the vehicles at the Carmans' residence were the stolen vehicle. (COA App. 72; TT, 63:11-15).

Description of the Property

The Carmans' house sits on a corner lot. The main street runs along the front of the house and a side street runs along the left of the house. (Pet. App. 4a).

The Carmans have a front door, with a clearly marked path leading up to it. (Pet. App. 4a; COA App. 21, 23, 44, 45, 254, 257; TT, 12:9-12, 14:6-9, 35:14-16, 36:5-9 Plaintiffs' Trial Exhibits 22, 26).[2]

When visitors come to the Carman home they use the front door entrance. (COA App. 24, 44, 45; TT,15:6-23, 35:20-36:4).

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[2] The Court of Appeals appended the photographs of the property which had been trial exhibits and which were relevant to the appeal as exhibits to its opinion. (Pet. App. 15a 19a). As discussed in more detail below, these photographs which are part of the Court of Appeals' opinion serve better than words to explain the facts and thus to limit the holding of that court's opinion.

The front door and front steps are shown in Plaintiffs' Trial Exhibit 26. (Pet. App. 19a).

The clearly marked path to the Carmans' front door is shown in Plaintiffs' Trial Exhibit 22. (Pet. App. 17a).

Carroll and Trooper Roberts never approached the Carmans' front door. (COA App. 74-75; TT, 65:24-66:5).

The back deck, which is physically attached to the house (and is where Carroll went instead of to the front door), has fencing around it. It has various items of domestic use on it, including tables with umbrellas, chairs and a grill. (Pet. App. 15a).

The Warrantless, Consentless Search of the Carmans' Garage

Carroll parked his patrol vehicle at the Carmans' residence, exited his vehicle and entered the Carmans' back yard and garage/car port because he claimed he saw a light on in the garage. (COA App. 79-80, 87, 88; TT, 70:21-71:13, 78:25-79:3).

However, the garage never had electricity, was never wired for electricity and never had any lights in it. (COA App. 25-26, 45, 251, 252; TT, 16:1-17:24, 36:10-22; Plaintiffs' Trial Exhibits 19, 20).

The incident at the Carmans' property happened at two o'clock in the afternoon in July on a sunny day. (COA App. 88; TT,79:4-10).

Carroll did not have a warrant to search the Carmans' house, yard, garage or curtilage. (COA App. 61,72, 79; TT, 52:11-12, 63:20-23, 70:10-14).

Carroll did not have an arrest warrant for Michael Zita. (COA App. 61, 72- 73; TT, 52:9-10, 63:24-64:1).

Carroll's Warrantless, Consentless Entry onto the Carmans' Curtilage

After searching the garage, Carroll and Trooper Roberts walked from the garage located in the back yard of the Carmans' property **onto the deck that is attached to the back of the Carmans' house**. (COA App. 63, 73-74; TT, 54:1-3, 64:24-65:3).

Ms. Vergottini glanced out the window and noticed police officers in the back yard. (COA App. 29, 46-47; TT, 20:17-20, 37:22-38:13).

The Carmans' back yard is an area where visitors don't usually go. (COA App. 47; TT, 38:1-9).

Disputed Facts

What happened next was disputed, but we discuss the version most favorable to petitioner Carroll.

Noticing Carroll and Roberts on his back deck, Mr. Carman came out of the house. According to the troopers, Mr. Carman was belligerent and aggressive, and asked "who the fuck are you?" Given this behavior, Carroll thought Carman might be Zita. In response to Carroll's questioning who he was, Mr. Carman refused to divulge his identity and turned away from the troopers. According to the troopers, Mr. Carman appeared to reach for his waist, bringing his hands outside the troopers' view. Fearing that Mr. Carman might be reaching for a weapon, Carroll grabbed Mr. Carman's arm. Mr. Carman twisted away and fell off

the deck. Mr. Carman was in fact unarmed. (Pet. App. 5a).

Despite being on his own deck attached to his own home, Mr. Carman was not free to return to the inside of his home. (COA App. 75, 95; TT, 66:12-21, 86:8-12).

Petitioner's Misstatements of Fact

At page 3 of his petition to this Court, Carroll states that "[d]ue to the layout of the property and parking area, the entrance from the deck appeared to be a customary entryway used by visitors arriving by car. . . ." However, the objective, undisputed and undisputable facts reveal otherwise. The photographs attached to the Court of Appeals' opinion (Pet. App. 15a-19a) show a front door and a path to a front door. The photographs show the absence of any sort of path to the back deck. The photographs show an enclosed back deck attached to a home. This reveals that the front door only appears to be the customary entryway used by visitors. Neither this Court nor any court should ignore objective, indisputable facts. As this Court observed at the summary judgment stage of a case, a court may not adopt a version of "facts" which is utterly contradicted by the record:

> [T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248, 106 S. Ct. 2505, 91 L. Ed.2d 202 (1986). When opposing parties tell two different stories, one of which is blatantly contradicted by the

> record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. . .
>
> Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believed him. **The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape."**

Scott v. Harris, 550 U.S. 372, 380-81 (2007).

In the present case, the Court of Appeals was correct to rely on the objective facts, and not any make-believe version of facts which is objectively inaccurate. The importance of objectivity in this case is twofold. First, as discussed by *Scott*, *supra*, courts are bound to credit objective facts and disregard visible fiction. Second, the Fourth Amendment standard is an objective standard. *See, e.g.*, *Scott*, *supra*, 550 U.S. at 381 (discussing "the Fourth Amendment's 'objective reasonableness' standard" (*quoting Graham v. Connor*, 490 U.S. 386, 388 (1989))).

Petitioner Carroll also strategically but inaccurately discusses the "jury's finding" in this case. Carroll states that the "jury's finding [was] that this was such a situation" in which a "residence might have more than one entrance customarily used by visitors." Pet. Brief, at 7. However, petitioner simply conjured up this "jury finding." Nowhere in the record (or outside the record) is there any such finding. No special verdict question gave the jury an opportunity to make such a finding. Nor do the objective facts permit a

finding, as petitioner suggests at pages 15-16 of his brief, that there is one entrance customarily used by visitors arriving by foot and another used by visitors arriving by car; nor is it a beach house with a front door facing the water and a back door facing the access road; nor is it a lakeside home with a door from the dock in one direction and another door in another direction. The objective facts do not permit any such finding, the jury was not asked to make such a finding and it did not make such a finding.

* * *

In sum, the objective facts are that there was a clear path and entrance to the Carmans' front door. Petitioner Carroll chose to ignore that entrance. Carroll instead poked his head in a carport and then walked across a back lawn, climbed stairs to a back deck which had fencing on it and was attached to the back of the Carman home. Noticing this intrusion, Mr. Carman came outside and, according to Carroll, was rude. Carroll wound up grabbing Mr. Carman and causing Mr. Carman to fall off the deck. All of this could have been avoided had Carroll used the customary entrance at the front door which girl scouts, pizza deliverers, neighbors who wish to borrow a cup of sugar, and the rest of society recognizes as reasonable.

REASONS FOR DENYING THE WRIT

I. Petitioner Jeremy Carroll's Repeated Reference To The Third Circuit's "Categorical 'Front Door' Rule" Completely Misconstrues the Third Circuit's Holding

A. The Third Circuit's Holding and Reasoning Is Flexible; It is Not Categorical or Rigid

Petitioner Carroll repeatedly and inaccurately states that the Third Circuit created a "categorical 'front door' rule" or a "categorical rule." This could not be further from the truth. The Third Circuit did not create a categorical rule at all. Rather, the Third Circuit's holding in this case is based on the facts in this case, and is completely consistent with its sister circuits.

The Third Circuit explicitly recognized that while the front door is the default door in which visitors typically come, that is not always the case. "We recognize that there may be some instances in which the front door is not the entrance used by visitors. Despite Carroll's argument to the contrary, this is not one such instance." Pet. App. 9a, note 7.

Thus, the Third Circuit recognized that cases and factual situations differ and each have their own nuances. The Third Circuit simply found that the facts in this particular case established that Carroll violated the Fourth Amendment by attempting a "knock and talk" by bypassing the normal way that people attempt to talk to their neighbors or others with whom they are not acquainted.

The facts could not be clearer, and they were undisputed. The Carmans' home is on a small lot. There is a clearly defined front door with a front foot path leading to it. This is the signal of the implicit license society recognizes that we give to others to come visit.

There was no similar path in the backyard. There was nothing to indicate that the Carmans expected visitors to traipse across their backyard, open the gate on their deck, climb the steps onto the deck and knock on the sliding glass door in the back of the house.

On the particular facts of this case, the Third Circuit found that Carroll's entry onto the Carmans' curtilage violated their Fourth Amendment rights.

In addition to the Third Circuit's explicit recognition that there are some instances in which the front door is not the entrance used by visitors (Pet. App. 9a, note 7), in other parts of its opinion the court recognized that the front door is the usual, but not categorical, place where visitors including police officers may make inquiry. For example, the Third Circuit quoted this Court's opinion in *Florida v. Jardines*, ___ U.S. ___, 133 S. Ct. 1409 (2013): The "implied invitation" to talk to a person in a home "'**typically** permits the visitor to approach the home by the front path. . . . Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters.'" (Pet. App. 10a, *quoting Jardines*, 133 S. Ct. at 1415; emphasis added).

The Third Circuit also discussed its prior opinion in *Estate of Smith v. Marasco*, 318 F.3d 497 (3d Cir. 2003):

> Although officers have a right to knock at the front door while executing a "knock and talk," this right does not "necessarily extend[] to the officers the right to enter [elsewhere] into the curtilage. *Marasco*, 318 F.3d at 520. In *Marasco*, we recognized that an officer's entry into other parts of the curtilage "*after not receiving an answer at the front door* might be reasonable" in limited situations. *Id.* (emphasis added).

Pet. App. 11a.

The Third Circuit thus re-affirmed its prior holding that depending on the facts police officers may enter other parts of curtilage. The front path and front door may be the typical default place in which police officers, like the rest of society, may initiate a consensual encounter with persons in a home. But the Third Circuit in no way created a "categorical rule."

In the present case, the Third Circuit simply recognized that the layout of the Carmans' home and property made clear that the front door was the usual way of initiating contact with the residents. Carroll's choice to park near the back, so it was easier to cut across the back yard and climb onto the back deck attached to the home did not somehow negate the implied license to begin an encounter at the front door.

B. Caselaw Discussed By Petitioner

A review of the Third Circuit's opinion and its absence of the "categorical rule" petitioner denounces should end the inquiry into whether there is a split in the circuits warranting Supreme Court review. Nonetheless, we will discuss cases cited by petitioner Carroll to show that the circuits, including the Third Circuit, are in complete accord.

Petitioner Carroll first discusses *U.S. v. James*, 40 F.3d 850 (7th Cir. 1994), *vacated on other grounds*, 516 U.S. 1022 (1995). (Petitioner's Brief, at 8-9). In *James*, the officers "used a paved walkway along the side of the duplex leading to the rear side door. . . Both the paved walkway and the rear side door were accessible to the general public and the rear side door was commonly used for entering the duplex from the nearby alley." *Id.*, at 862. This contrasts with the present case in which there was no paved or other walkway across the Carmans' back yard, there was no alleyway or other access to the back yard (other than outright trespassing), and there was zero indication that cutting across the back yard and climbing onto the back deck constituted public access. Unlike the officers in *James* who used a paved walkway, Carroll chose not to use the existing and obvious pathway to the front door.

Carroll next discusses *U.S. v. Titemore*, 437 F.3d 251 (2d Cir. 2006). *Titemore*, like *James*, *supra*, is distinguishable on its facts. It does not pronounce any rule of law different from that which the Third Circuit discussed in the present case. In *Titemore*, the court found that the sliding-glass door and porch at which the police officer approached the house "constitute[d] part of a principal entranceway." *Id.*, at 259. Part of

the court's analysis which led to that conclusion was that "the evidence established that the sliding-glass door was in fact a primary entrance visible to and used by the public. The porch, door, and lawn faced Patton Shore Road and were visible from both Patton Shore and Titemore Woods Roads. Three steps led up to the porch, indicating that was a means of ingress and egress. And there was also a doorbell, albeit one that was not working, which would suggest to visitors that they could visit the home from the porch." *Id.* Here, unlike the property in *Titemore*, the evidence established that the door in question was **not** a primary entrance. The door was not visible to or used by the public. The Carmans' sliding door on their back deck did not face any street, but only their back yard, and there was no doorbell on it. On the other hand, the Carmans' front door, front porch and front pathway had all the hallmarks of a primary entrance.

In *U.S. v. Thomas*, 430 F.3d 274 (6th Cir. 2006), cited by Carroll at page 10 of his brief, the district court had made explicit findings that the back door in question "was customarily used as the entrance to the house," and the homeowner did not argue otherwise. *Id.*, at 280. In *U.S. v. Garcia*, 997 F.2d 1273 (9th Cir. 1993), cited by Carroll at page 10 of his brief, the district court found that the officers had a good faith belief that they were going to the front door of the apartment in question. 997 F.2d at 1279. The court concluded that "[i]f the front and back of a residence are readily accessible from a public place, like the driveway and parking area here, the Fourth Amendment is not implicated when the officers go to the back door reasonably believing it is used as a principal entrance to the dwelling." *Id.*, at 1279-80.

These cases are completely different from the present case, in which there were no such factual findings in the district court, and in which the objective evidence could yield only a single conclusion: that the front path, front porch and front door were the primary entrance to the home, and that the sliding glass door to the raised deck which was not visible from any public place was not the primary entrance.

Carroll's citation to *U.S. v. Wells*, 648 F.3d 671 (8th Cir. 2011) does not help him. In finding a foray into the backyard unconstitutional, the court explained the law the same law applied by the Third Circuit. "A backyard that is accessible only by walking around the side of a home is a place generally recognized as 'an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened.'" *Id.*, at 677, *quoting Florida v. Riley*, 488 U.S. 445, 452 (1989) (O'Connor, J., concurring) (further citations omitted). *Wells* explained that "[t]o the extent that the 'knock-and-talk' rule is grounded in the homeowner's implied consent to be contacted at home, we have never found such consent where officers made no attempt to reach the homeowner at the front door." *Wells*, 648 F.3d at 679. *Wells* further stated that "[w]e are not prepared to extend the 'knock-and-talk' rule to situations in which the police forgo the knock at the front door and, without any reason to believe the homeowner will be found there, proceed directly to the backyard. *Id.*, at 680. Carroll did exactly what *Wells* explained was not permitted: he chose the back deck sliding door and not the front door, without any reason to believe the back deck door was the primary entrance or that that was where the homeowners would be.

Carroll also refers to two state cases. In *State of New Jersey v. Domicz*, 188 N.J. 285, 907 A.2d 395 (2006), discussed by Carroll at pages 10-11 of his brief, the trial court made factual findings which included crediting the testimony of the officers that the position of parked cars in defendant's driveway led them to believe that the back door was used by residents and visitors. Further, the officers did not observe any criminal wrongdoing or contraband before returning to the front of the house where the homeowner had answered the door. *Id.*, 188 N.J. at 301, 907 A.2d at 404. The court was explicit that its holding was "[i]n light of the trial court's findings." 188 N.J. at 303, 907 A.2d at 405. As discussed above, in the present case there were neither judicial findings of fact (as exist in most curtilage or knock-and-talk cases, because they typically arise in motions to suppress evidence in criminal cases), nor were there identifiable factual findings by a jury.

Finally, at page 11 of his brief, Carroll refers to *Trimble v. State of Indiana*, 842 N.E.2d 798 (Ind. 2006). In *Trimble*, the officer "pulled into Trimble's driveway, which wrapped around the back of Trimble's house, and parked his car behind the house. Most of the traffic to Trimble's house goes to the back door." 842 N.E.2d at 801. Because the officer entered the property "through the normal route of access" (*id.* at 800), there was no Fourth Amendment violation.

* * *

None of the cases petitioner Carroll cites state a different rule than that enunciated and applied by the Third Circuit. On the facts of those cases, the result or

legal conclusion would have been the same had the case been heard in the Third Circuit.

We understand Carroll's attempt to identify some sort of a rift between the circuits, but such a rift simply does not exist. There is no split in the circuits. The Third Circuit opinion is not in conflict with the decision of any other United States court of appeals decision, nor does it conflict with a decision of any state court of last resort, nor has it departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court. Supreme Court Rule 10(a).

C. The Carmans Agree: How A Police Officer May Lawfully Approach a Residence to Conduct a "Knock and Talk" Is Important

At pages 11-12 of his brief, petitioner Carman correctly states that how a police officer may lawfully approach a residence to conduct a knock-and-talk is an important issue to police officers. It is no less nor more important to police officers than every other constitutional issue, *e.g.*, what constitutes probable cause or reasonable suspicion; what constitutes an arrest, investigatory detention or a mere encounter; what constitutes exigent circumstances in different situations; when can a car be stopped and for how long; what warnings must be given to suspects before interrogating them, and in what circumstances. There are many constitutional issues which impact on law enforcement. They are all important.

In the present case, the Third Circuit's opinion is not the categorical or rigid opinion which Carroll

pretends it is. It states the same principals of law as stated by its sister circuits and by this Court. The Third Circuit's opinion gives police officers appropriate guidance. (Pet. App. 9a-11a). The court explained, quoting *Jardines*, *supra*, that "'a police officer not armed with a warrant may approach a home and knock, precisely because that is 'no more than any private citizen might do.'" Pet. App. 9a. The Third Circuit gave significant guidance in the following pages of its opinion, both as to what is or is not permitted, and the underlying rationale for the rule.

The Third Circuit did not lay down a rigid rule, but gave guidance as to the rule, its rationale and the exceptions to the rule. Nothing more can be asked of a court, especially when it tethers its opinion to the facts of the case before it, as the Third Circuit did by, among other ways, appending the photographs of the property to its opinion.

The hypothetical factual scenarios petitioner discusses at page 12 of his brief are all covered by the Third Circuit's opinion, explanations and rationales. Were the court to attempt more, it would have to issue advisory opinions on a host of situations not before it.

There is simply no utility for this Court to grant *certiorari* in this case.

II. The Law Was Clearly Established Long Before the Events at Issue Here; Petitioner Is Not Entitled To Qualified Immunity

At pages 16-18 of Carroll's Petition For Writ of Certiorari, he makes a qualified immunity argument.

That argument is wrong for multiple reasons, and certainly not worthy of this Court's review.

First, petitioner Carroll relies on the faulty premise that the Court of Appeals created a categorical rule. As discussed above and as any plain reading of that court's opinion reveals, the Court of Appeals simply did not explicitly or implicitly create such a rule. Carroll simply shields his eyes from the Court of Appeals' actual words: "We recognize that there may be some instances in which the front door is not the entrance used by visitors. Despite Carroll's argument to the contrary, this is not one such instance." Pet. App. 9a, note 7. Throughout his qualified immunity argument, petitioner Carroll refers to the Court of Appeals' phantom "categorical rule."

Second, petitioner Carroll correctly notes that the Court of Appeals discussed its prior decision in *Estate of Smith v. Marasco*, 318 F.3d 497 (3d Cir. 2003). In *Marasco*, the Third Circuit discussed the fact that police officers are always permitted to enter parts of property to which the general public or visitors would be permitted. 318 F.3d at 519. The court then discussed the fact that in some circumstances officers pursuing a lawful objective might reasonably enter other parts of the curtilage. The court gave examples of such instances. 318 F.3d at 520-21.

Petitioner Carroll's citation on page 18 of his brief to *Lease v. Tyler*, 2008 WL 2673381 (M.D.Pa. 2008) as somehow revealing confusion is completely off the mark. In *Lease*, as Carroll acknowledges, the officer walked to a "side common entrance to an apartment building." (*6). This was a "common area utilized by those entering and exiting the building." *Id.* *Lease* is

completely consistent with the result in the present case and with the prior caselaw. *Lease* simply applied that law to a situation in which police had the same right as all others to approach a non-private, common area used by multiple people from multiple households.

The point that the police cannot tread at will into any part of curtilage is obvious and well-known. *See e.g., Maryland v. King*, __ U.S. __, 133 S. Ct. 1958, 1982 (2013) (Scalia, J., dissenting) ("And could the police engage, without any suspicion of wrongdoing, in a 'brief and...minimal' intrusion into the home of an arrestee-perhaps just peeking around the curtilage a bit? [citation omitted] Obviously not.").

This Court has been clear, long before the events in the present case, that police without a warrant may enter the curtilage of a home in a similar manner to other members of the public, but not in a manner which exceeds the license extended to members of the public. While *Florida v. Jardines*, ___ U.S. ___, 133 S. Ct. 1409 (2013) was decided after the events in the present case, both its majority opinion and dissent discuss long and clearly established law.

For example, the majority opinion explained, *inter alia*, as follows:

> We therefore regard the area "immediately surrounding and associated with the home"—what our cases call the curtilage—as "part of the home itself for Fourth Amendment purposes." *Oliver*, *supra*, at 180, 104 S.Ct. 1735. That principle has ancient and durable roots. Just as the distinction between the home and the open fields is "as old as the common law,"

Hester, *supra*, at 59, 44 S.Ct. 445, so too is the identity of home and what Blackstone called the "curtilage or homestall," for the "house protects and privileges all its branches and appurtenants." 4 W. Blackstone, Commentaries on the Laws of England 223, 225 (1769). This area around the home is "intimately linked to the home, both physically and psychologically," and is where "privacy expectations are most heightened." *California v. Ciraolo*, 476 U.S. 207, 213, 106 S.Ct. 1809, 90 L.Ed.2d 210 (1986).

While the boundaries of the curtilage are generally "clearly marked," the "conception defining the curtilage" is at any rate familiar enough that it is "easily understood from our daily experience." *Oliver*, 466 U.S., at 182, n. 12, 104 S.Ct. 1735. Here there is no doubt that the officers entered it: The front porch is the classic exemplar of an area adjacent to the home and "to which the activity of home life extends." *Ibid.*

* * *

"A license may be implied from the habits of the country," notwithstanding the "strict rule of the English common law as to entry upon a close." *McKee v. Gratz*, 260 U.S. 127, 136, 43 S.Ct. 16, 67 L.Ed. 167 (1922) (Holmes, J.). We have accordingly recognized that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." *Breard v. Alexandria*, 341 U.S. 622, 626, 71 S.Ct. 920, 95 L.Ed. 1233 (1951). This implicit license typically permits the visitor to approach the

> home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do." *Kentucky v. King*, 563 U.S. ——, ——, 131 S.Ct. 1849, 1862, 179 L.Ed.2d 865 (2011).

Jardines, 133 S. Ct. at 1414-16.

The cases cited by the *Jardines* Court, for all of the propositions which are relevant to the present case, were decided well before the events in this case. Blackstone's Commentaries on the Laws of England, of course, was published more than two centuries prior to the events in this case.

Justice Alito's dissent in *Jardines* was also crystal clear, and it too relied on long established law and older cases which explained to any reasonable police officer what he or she is permitted to do, and forbidden from doing. In explaining the limited license that police, like every other person, have to approach a house, Justice Alito used the phrases "front door" or "front porch" at least 21 times.

While Justice Alito's opinion was a dissent, his opinion was premised on the fact that the police officers in *Jardines* – unlike petitioner Carroll – "approached the front door via the driveway and a paved path – the

route that any visitor would customarily use." *Id.* at 1421.

Citing caselaw and scholarly commentary which preceded the events in the present case, Justice Alito explained:

> It is said that members of the public may lawfully proceed along a walkway leading to the front door of a house because custom grants them a license to do so. *Breard v. Alexandria*, 341 U.S. 622, 626, 71 S.Ct. 920, 95 L.Ed. 1233 (1951); *Lakin v. Ames*, 64 Mass. 198, 220 (1852); J. Bishop, Commentaries on the Non–Contract Law § 823, p. 378 (1889). This rule encompasses categories of visitors whom most homeowners almost certainly wish to allow to approach their front doors—friends, relatives, mail carriers, persons making deliveries. But it also reaches categories of visitors who are less universally welcome—"solicitors," "hawkers," "peddlers," and the like.

Id. at 1421-22.

Justice Alito further explained:

> Of course, this license has certain spatial and temporal limits. A visitor must stick to the path that is typically used to approach a front door, such as a paved walkway. A visitor cannot traipse through the garden, meander into the backyard, or take other circuitous detours that veer from the pathway that a visitor would customarily use.

Id. at 1422. That is exactly what petitioner Carroll did in this case, except that he did not "meander." He ignored the front path, front porch and front door, and walked across the back and climbed on the back deck.

Justice Alito also cited with approval to *United States v. Wells*, 648 F.3d 671, 679-80 (8th Cir. 2011) for the proposition that the "police exceeded scope of their implied invitation when they bypassed the front door and proceeded directly to the back yard." *Jardines*, 133 S. Ct. at 1422.

Multiple other cases in the circuits and in this Court have held similarly (presumably, the cases to which Carroll refers this Court are the most favorable he can find to his position; as discussed above, they all state the same rule of law as the Third Circuit did in the present case). The law is clear. The Third Circuit did not overstep or extend the law; it simply applied pre-existing law to the facts of this case.

* * *

The Third Circuit's opinion in this case is in line with this Court's cases, the various circuits' cases and ancient common law. While the case is important to the parties, it is an unremarkable case in all respects.

CONCLUSION

The Third Circuit's opinion in this case was not only correct, it did not strike new ground. The opinion is completely consistent with this Court's cases, and with law that developed over the last several centuries. There is no conflict between the circuits. Petitioner strains to interpret in the Third Circuit's opinion something which simply is not there.

This Court should deny *certiorari*.

Respectfully submitted,

Barry H. Dyller, Esq.
Counsel of Record
DYLLER LAW FIRM
88 North Franklin Street
Wilkes-Barre, PA 18701
(570) 829-4860
barry.dyller@dyllerlawfirm.com

Counsel for Respondents